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### **REMARKS/ARGUMENTS**

Claims 1-23 and 25 to 27 are pending in this application.

Claims 5-8, 14-17 and 23 are allowed.

Claims 1-4, 9-13, 18-22 and 25-27 are rejected under 35 U.S.C. 103(a).

#### **Claim amendments**

Claims 1, 10 and 12 have been amended to add that the selective overriding of the DnD functionality is automatic.

#### **Examiner's response to arguments**

The Examiner found the remarks presented in our last response with respect to Otha C. Lee et. al. (US 3,564,148 hereinafter "Otha") unpersuasive. As mentioned in our early response, Otha discloses a human operator choosing to override the do-not-disturb condition. While Applicant does not concede that combining Otha with the Ericsson reference was a proper combination, it is respectfully submitted that Otha does not disclose that the override is automatic as claimed in the amended independent claims 1, 10 and 12. For at least this reason it is requested that the rejection under 35 U.S.C. 103(a) be withdrawn.

#### **35 U.S.C. 103(a) rejection**

Claims 1-4, 9-12, 18, 20-21 and 26-27, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ericsson, Motorola, Siemens, Nokia Technical Specification (Push to Talk over Cellular (PoC); User Requirements; PoC Release 1.0; User Requirements V 1.1.1 (2003-10) hereinafter, "Ericsson") in view of Otha C. Lee et al. (U.S. PAT. 3,564,148 hereinafter, "Otha").

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Claims 13, 19, 22, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ericsson, Motorola, Siemens, Nokia Technical Specification (Push to Talk over Cellular (PoC); User Requirements; PoC Release 1.0; User Requirements V 1.1.1 (2003-10) hereinafter, "Ericsson") in view of Otha and further in view of Griffiths (U.S. PUB. 2002/0186827).

Applicant respectfully traverses these rejections for the reasons above, as well as the reasons that follow.

The Supreme Court in *KSR International Co. v. Teleflex Inc. (KSR)*, 82 USPQ2d 1385 (2007) reaffirmed the framework for determining obviousness as set forth in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)). Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:

- (A) Ascertaining the scope and content of the prior art; and
- (B) Ascertaining the differences between the claimed invention and the prior art; and
- (C) Resolving the level of ordinary skill in the pertinent art.

Scope and content of the prior art

The Examiner has characterized the art in the same manner as in the previous Office Action.

The Examiner did not comment on our arguments presented with respect to Ericsson and therefore, we presume they were found to be persuasive.

In any event, for at least the reasons given in our last response, it is submitted that the Examiner made an error in his analysis of the scope and content of the prior art.

For example, the Examiner refers to paragraph 5.8, paragraph 5.10 and paragraph 6.2.1.1 of Ericsson.

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Paragraph 5.8 recites that "if the invited user has DnD active, the inviting or added user shall receive an indication that the invited user is busy" and "...a user shall be able to easily active and deactivate the DnD function." Thus, Ericsson teaches a DnD function which may be activated or deactivated. Paragraph 5.8 does not disclose "selectively" overriding the DnD function. It is either completely active or inactive. There is no "ignoreDnD" attribute for a user device which is used to determine when the DnD functionality is selectively overridden.

Paragraph 5.8 does not teach any selective overriding of the DnD function.

Paragraph 5.10 of Ericsson teaches that the system may have an accept list and a reject list. "On the accept list, the user maintains users and/or groups from whom the user accepts to receive instant talk session request" and "... on the reject list, the user maintains users and/or groups from whom the user does not accept to receive instant talk session requests." These accept and reject lists are not tied into the do-not-disturb functionality. If the do-not-disturb functionality is inactive, the accept and reject lists are used to determine which calls go through. If the do-not-disturb functionality is active, then no call goes through irrespective of whether the inviting user is on the accept or reject list. The accept and reject lists are not used in any way as "an ignoredDnD attribute for the user device". These accept and reject lists in no way correlate to what happens when the do-not-disturb function is active or inactive. Thus, they do not in any way supply an ignoredDnD attribute for the user device.

Paragraph 6.2.1.1 describes how a call is set up from the perspective of an inviting user. The Examiner has alleged "the systems shall check the inviting user registered (read on update the ignoreDnD), incoming session are not blocked (read and ignoreDnD) for any reason when DnD is active." As noted in our previous response, this is inconsistent with what is stated in paragraph 5.8 which says that "calls are blocked when the DnD is active", rendering Ericsson inconsistent. Further, even based on the wording of paragraphs 6.2.1.1 as written, this paragraph does not teach selectively overriding a do-not-disturb function based on an attribute of the user device, as alleged by the Examiner. There is no "selection". In paragraph 6.2.1.1, if the DnD is active, then the incoming session is not blocked for any reason. In other words, there is no way to selectively override the DnD function; if DnD is active, based on the wording of this paragraph, all calls go through.

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Ericsson is simply an example of the prior art shown in Figure 1 of the present application.

In summary, Ericsson does not teach any means by which a do-not-disturb function can be selectively overridden. The do-not-disturb function taught in Ericsson always either blocks all session requests or passes all session request. There is no mechanism to “selectively override the do-not-disturb functionality” in any way, much less in the manner claimed which is based on “an ignored DnD attribute for the user device applied to a criteria or a condition of the talk request other than a user device identifier”.

The Examiner admits that Ericsson does not teach or suggest “selectively overriding DnD functionality based on a condition or criterion of the call other than a user device identifier”. The Examiner points to the abstract of Otha which states that “the operator has the option of overriding the do-not-disturb condition in an emergency without changing the state of said circuit” to support his argument. However, Otha nowhere teaches “an ignoreDnD attribute for the user device”. The abstract of Otha merely states that an operator may chose to override the do-not-disturb condition. It does not teach automatic override, as presently claimed. Furthermore, the operator making such a choice is not an “ignoreDnD attribute for the user device”. The operator’s decision on overriding the do-not-disturb is in no way based on “an ignoreDnD attribute of the user device”; it is a decision solely made by the operator. Thus, Otha does not teach “an ignoreDnD attribute for the user device applied to a criteria or condition of the talk request” or “selectively and automatically overriding DnD functionality”

Differences between the claimed invention and the prior art

For the reasons given above, it is submitted that neither Ericsson nor Otha disclose an ignoreDnD functionality for a device upon which selective override of DnD functionality is based, as claimed in independent claims 1, 10 and 12. Furthermore, neither of these two references disclose automatic selective override of DnD functionality.

Therefore, Applicant respectfully submits that the subject matter of claims 1, 10 and 12, together with all claims dependent thereon is not disclosed in the combination of Ericsson and Otha.

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The Examiner had rejected claim 20 on the same basis as the rejection of claims 1 and 10. Applicant submits that claim 20 is inventive over Ericsson and Otha for the reasons outlined above.

The remainder of the rejected claims in this group are dependent claims and are inventive for at least the same reasons as their respective base claim.

Further, the Examiner has rejected claim 3 stating that Ericsson teaches the ignoreDnD attribute comprising an ignored DnD flag. The Examiner again points to paragraph 5.10 of Ericsson. As previously submitted, the access list management of Ericsson is in no way tied in with the do-not-disturb functionality. The access list does not comprise an ignoreDnD flag. The access list has nothing to do with the DnD function. The DnD is either turned on or off. It is in no way affected by the access list.

Regarding claim 4, the Examiner reference to (page 6 [00078]) is not relevant to Ericsson. Again, the Applicant reiterates that Ericsson does not teach any ignore reasons or values tied to the do-not-disturb functionality.

Rejection based on Siemens, Otha and Griffiths

Claims 13, 19, 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ericsson in view of Otha and further in view of Griffiths (U.S. PUB. 2002/0186827).

The Examiner previously conceded that Griffiths does not teach "selectively overriding DnD functionality for the requested communication system as a function of an ignoreDnD attribute for the user device". Thus, Griffiths does not overcome the deficiency of Ericsson and Otha outlined above. For at least this reason, Applicant submits that the subject matter of claims 13, 19, 22 and 25 is not disclosed in Ericsson, Otha and Griffiths either alone or in combination.

Person skilled in the art

It is also submitted that the Examiner erred in determining that a person skilled in the art, would

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think to use Otha in combination with Ericsson. As mentioned in our last response, Otha discloses a PBX manually operated by a human operator, who can override a do-not-disturb function. It is submitted that there would be no motivation to combine this with the modern Push-to-Talk system of Ericsson. It is respectfully submitted that to implement the automatic override for a device capable of walkie-talkie-like functionality is not a simple matter of combining g the two references.

Conclusion

It is, therefore respectfully submitted that the Examiner has erred in his factual inquiries under the test set out in *KSR*. It is respectfully requested that the rejections under 35 U.S.C. 103(a) be withdrawn.

In view of the foregoing, favourable consideration and allowance of this application is respectfully requested.

Respectfully submitted,

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